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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,149	08/21/2003	Armando Luis	196005-2001	7173
20999	7590	05/27/2004		
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER MAUST, TIMOTHY LEWIS	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/645,149	LUIS, ARMANDO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Timothy L Maust	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-12 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☒ Claim(s) 13-17 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12 and 18-21, drawn to an apparatus for the preservation of still beverages, classified in class 141, subclass 65.
- II. Claims 13-17, drawn to a valve head, classified in class 141, subclass 64.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it doesn't require a handle for gripping. The subcombination has separate utility such as being used in a system not requiring a vacuum pump.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Tedd W. Van Buskirk on 5/14/04 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-12 and 18-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-17 have been withdrawn from further

consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Tarlow.

In regard to claims 1, 2 and 18, the Tarlow reference discloses an "apparatus" 100 comprising a "vacuum tank" 4, a "vacuum pump" 14, a "vacuum line" 20, and at least one "valve head" 23 having an "actuator" 8, as claimed.

In regard to claim 3, see "trap" 220 (Fig. 4).

In regard to claim 4, inasmuch structure that is defined by a "feedback mechanism", vacuum pressure switch 10 meets the claimed limitation (Column 3, lines 20-22).

In regard to claim 5, in order for vacuum pressure switch 10 to shut down the vacuum pump, it would inherently contain a "pressure gauge".

In regard to claim 18, the method would be inherent during normal use and operation of the device.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tarlow.

The Tarlow reference discloses the invention substantially as claimed (discussed supra), but doesn't disclose having a plurality of vacuum lines. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of vacuum lines, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 10, 11, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarlow.

In regard to claims 10, 11, 19 and 20, the Tarlow reference discloses the invention substantially as claimed (discussed supra), but doesn't disclose the vacuum tank maintaining a vacuum between 22 and 24 in-Hg. It would have been obvious to one having ordinary skill in the art at the time the invention was made to maintain the

vacuum in a range of 22 and 24 in-Hg, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105

Claims 12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarlow.

In regard to claims 12 and 21, the Tarlow reference discloses the invention substantially as claimed (discussed supra), but doesn't disclose evacuating all air in 3.5 seconds. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a vacuum pump that evacuates all air from a partially consumed bottle in no more than 3.5 seconds, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617F 2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Ford, Sr. and Berresford et al. references pertain to bottle vacuuming systems, similar to Applicant's.

### ***Allowable Subject Matter***

Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Tue. - Fri. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust  
Primary Examiner  
Art Unit 3751

Tlm  
5/25/04